

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ALHAMBRA UNIFIED SCHOOL
DISTRICT AND WEST SAN GABRIEL
VALLEY SELPA.

OAH CASE NO. 2015020029

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT REGARDING WEST
SAN GABRIEL VALLEY SPECIAL
EDUCATION LOCAL PLANNING
AREA

On January 28, 2015, Parent on behalf of Student filed with the Office of Administrative Hearings a Due Process Hearing Request¹ (complaint) naming the Alhambra Unified School District and the West San Gabriel Valley Special Education Local Planning Area (SELPA) as respondents.

On February 17, 2015, the SELPA filed a Notice of Insufficiency as to Student's complaint.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.² The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of title 20 United States Code section 1415(b)(7)(A).

A complaint is sufficient if it contains: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education (FAPE) to the child; (2) facts relating to the problem; and (3) a proposed

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 United States Code section 1415(b)(7)(A).

² 20 U.S.C. § 1415(b) & (c).

resolution of the problem to the extent known and available to the party at the time.³ These requirements prevent vague and confusing complaints, and promote fairness by providing the named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.⁴

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁵ The pleading requirements should be liberally construed in light of the broad remedial purposes of the IDEA and the relative informality of the due process hearings it authorizes.⁶ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁷

DISCUSSION

Student’s form complaint alleges a single claim. The claim is whether the “District” has denied Student a free appropriate public education by failing to provide Student with an appropriate transition plan. There are no facts alleged as to the SELPA, which is only mentioned in the section entitled “Parties to be Named.”

Student’s complaint is insufficiently pled in that it fails to provide the SELPA with the required notice of a description of the problem and the facts as to why the SELPA would have liability. Thus, the complaint is not sufficient as to the SELPA.

If Student desires to amend the complaint as to the SELPA, it should be noted that in general, the IDEA due process hearing procedures extend to “the public agency involved in any decisions regarding a pupil.” (Ed. Code, § 56501, subd. (a).) A “public agency” is

³ 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

⁴ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁵ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁶ *Alexandra R. v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, No. 06-cv-0215-JL) 2009 WL 2957991 at p.3 [nonpub. opn.]; *Escambia County Board of Educ. v. Benton* (S.D.Ala. 2005) 406 F. Supp.2d 1248, 1259-1260; *Sammons v. Polk County School Bd.* (M.D. Fla., Oct. 28, 2005, No. 8:04CV2657T24EAJ) 2005 WL 2850076 at p. 3[nonpub. opn.] ; but cf. *M.S.-G. v. Lenape Regional High School Dist.* (3d Cir. 2009) 306 Fed.Appx. 772, at p. 3[nonpub. opn.].

⁷ Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed.Reg. 46540-46541, 46699 (Aug. 14, 2006).

defined as “a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs.” (Ed. Code, §§ 56500 and 56028.5.) Thus, although a SELPA may fit the definition of “public agency” set forth in the IDEA, to be a proper party for a due process hearing the SELPA must also be involved in making decisions regarding a particular student. Thus, any amended complaint should contain facts as to whether the SELPA is a public agency as to Student.

ORDER

1. Student’s complaint is insufficiently pled under section title 20 United States Code 1415(c)(2)(D) as to the West San Gabriel Valley SELPA, only.
2. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).⁸
3. The amended complaint shall comply with the requirements of title 20 United States Code section 1415(b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order. If Student files an amended complaint, OAH will issue a new scheduling order.
4. If Student fails to file a timely amended complaint, West San Gabriel Valley SELPA will be dismissed as a party, and the complaint will proceed as to the other respondent, Alhambra Unified School District.

DATE: February 18, 2015

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings

⁸ The filing of an amended complaint will restart the applicable timelines for a due process hearing.